ence of the corporation, while that in the state court was to terminate it. Therefore, the court argued, this case came within the exception and not the rule, and consequently the federal court's jurisdiction of the property was not exclusive. The reading of the entire decision from which the court quoted demonstrates that it completely misunderstood and misused the words it borrowed. There the question before the state court was the validity of a sale, and that before the federal court the rights of bondholders. When the federal court discovered that the state receivership was prior in time, it refused a writ of assistance to its own receiver. After laying down the rule and exception above stated, it pointed out that since the questions before the courts were different, there was no conflict of jurisdiction as to the question, and both suits could go on. Then it proceeded to show that as to the *res* there was a conflict, and decided that the court first getting jurisdiction over that could keep it. The distinction between conflict of jurisdiction as to the question and as to the *res*, which here escaped the New York court, has frequently been taken.[4] It is undoubtedly established that the court first acquiring jurisdiction over the *res* draws to itself the exclusive right to dispose of it for the purposes of the litigation then before it.[5] Even willingness of the receiver to surrender the *res* is immaterial,[6] since the property in fact is in the hands of the court. The courts say that where either state or federal court appoints a receiver, the result as to the other is as if the *res* were removed to another territorial sovereignty.[7]

Another argument of the court in support of its view was that, since the corporation is the creature of the state, the federal court by appointing a receiver cannot prevent the state from dissolving it. As already shown, the state may proceed with its dissolution suit, since that is different from the suit before the federal court. The possession of the property of the corporation may be desirable in such a proceeding, but it is not necessary. The inconvenience thus resulting is merely one of the many attendant upon divided jurisdiction. Furthermore, the court is not supported by the cases cited, except one passing dictum.[8] In fact, unnoticed by the court there is authority opposed to its contention.[9]

RIGHTS OF SECURED CREDITORS UPON INSOLVENCY OF THE DEBTOR OR HIS ESTATE. — The rights of a secured creditor against an insolvent debtor may be adjusted in one of two ways: either he may be required first to exhaust his security and credit the proceeds on his claim; or he may be allowed to recover a dividend on his full claim and resort to his security for

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[4] De La Vergne, etc., Co. *v.* Palmetto, etc., Co., 72 Fed. 579; Metropolitan Trust Co. *v.* Lake, etc., Ry., 100 Fed. 897.

[5] Shields *v.* Coleman, 157 U. S. 168; Mil. & St. P. R. R. *v.* Mil. & Minn. R. R., 20 Wis. 165. This principle is also applied in analogous cases: property in receiver's hands subject to a maritime lien cannot be disturbed. See Moran *v.* Sturges, 154 U. S. 256; nor taken by eminent domain, Western, etc., Co. *v.* Atlantic, etc., Co., 7 Biss. (U. S.) 367. See also Heidritter *v.* Elizabeth, etc., Co., 112 U. S. 294; State *v.* Marietta, etc., R. R., 35 Oh. St. 154.

[6] The E. L. Cain, 45 Fed. 367.

[7] *In re* Tyler, *supra*, 186; The E. L. Cain, *supra*, 369.

[8] Petition of Kittanning Ins. Co., 146 Pa. St. 102, 105.

[9] Lake, etc., Co. *v.* Brown, etc., Co., 44 Fed. 539, aff. *sub nom.* Leadville Coal Co. *v.* McCreery, 141 U. S. 475; Mercantile Trust Co. *v.* Missouri, etc., Ry., 48 Fed. 351. The federal receiver is not even a necessary party to the state's dissolution suit. City Water Co. *v.* Texas, 88 Tex. 600.

the balance. The former was the rule early adopted in bankruptcy proceedings,[1] and is the rule prescribed by the National Bankruptcy Act.[2] But this rule has been considered by most courts as purely statutory and, apart from bankruptcy proceedings, has received slight recognition. On principle it is inequitable, since it deprives the secured creditor of the advantages over unsecured creditors which the debtor had agreed to give him.[3] The courts have accordingly refused to follow the bankruptcy rule in cases of assignment for the benefit of creditors. The decisions almost universally hold that in such proceedings the secured creditor may recover a *pro rata* share on his whole claim without first resorting to his security.[4] But there is some conflict as to whether or not the secured creditor will be required to credit as payments on the debt any sums received from his security after the assignment and before disbursement. It is clear that if the creditor realizes on his security before insolvency he thereby voluntarily relinquishes one of his rights, and only the claim for the debt due at insolvency remains. But whether or not recoveries after assignment and before proof, or after proof and before disbursement, must be credited as payments, depends on the time at which the interest of the secured creditor to a *pro rata* share on his full claim becomes fixed — at the date of assignment, of proof of claim, or of disbursement. The correct view seems to be that the right of the creditor becomes fixed at the date of the assignment.[5] For by the assignment the assignee becomes a trustee of the assets for the benefit of the creditors, each of whom acquires a joint equitable ownership in the assets in proportion to the amount of his claim.[6] The creditor therefore proceeds against the assignee by virtue of his beneficial interest in the trust fund, and any recovery from his security after the assignment cannot prejudice his rights as equitable owner.

A more unsettled problem is presented in the case of an insolvent estate of a deceased debtor. The Supreme Court of Hawaii has recently decided that the right of a secured creditor against such an estate does not become fixed until disbursement, and consequently any sum realized on the security before that time must be credited on the debt. *Estate of Lavinia Kapu*, Sept. 10, 1907. The decision is in accordance with the weight of authority in this country,[7] but is difficult to support on principle. It is true, the administrator of the decedent is not, like the assignee, a trustee,[8] and the creditors do not therefore acquire an equitable ownership in the estate on the death of the debtor. But the secured creditor has his double security, and is entitled to proceed against both his debtor and his security and to make the most of both remedies.[9] Furthermore, when the debt is proved and allowed it should become fixed for the purpose of declaring dividends thereon, as the entry of allowance has the force and effect of a judgment.[10] The present decision seems fallacious in treating the claim of the creditor to share in the assets of the debtor and his debt against the debtor as if they

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1 Wiseman *v.* Carbonell, 1 Eq. Cas. Abr. 312.
2 30 Stat. at L. 560.
3 See People *v.* Remington, 121 N. Y. 328.
4 Bank *v.* Haug, 82 Mich. 607; *contra*, Union Bank *v.* Mechanics' Bank, 80 Md. 371.
5 Morris *v.* Olwine, 22 Pa. St. 441.
6 Allen *v.* Danielson, 15 R. I. 480.
7 Jamison *v.* Adler-Goldman Commission Co., 59 Ark. 548; Erle *v.* Lane, 22 Col. 273.
8 See Johnson *v.* Lawrence, 95 N. Y. 154. But see Hess's Estate, 69 Pa St. 272.
9 Mason *v.* Bogg, 2 Myl. & C. 443; Furness *v.* Bank, 147 Ill. 570.
10 Mitchell *v.* Mayo, 16 Ill. 83; 2 Woerner, Administration, § 392.

were identical,[11] and to allow the secured creditor to recover his *pro rata* share on his debt as it existed at the time of the proof and allowance of his claim seems a sounder rule.

VALIDITY OF STATE BONDS REDEEMED BEFORE MATURITY AND THEREAFTER ILLEGALLY PUT INTO CIRCULATION. — A peculiar situation arises when a negotiable instrument lawfully issued by a government and redeemed before maturity, but not destroyed or cancelled,[1] is later stolen and comes into the hands of a holder in due course. In the case of ordinary negotiable paper originally valid, a holder in due course has full title unaffected by previous payment [2] or voluntary reissue [3] on the part of the original obligor. Moreover, securities issued and redeemed by an individual,[4] a private corporation,[5] or a school district,[6] and without the consent of the maker put into circulation again before maturity, have been held valid, on the ground that the maker must suffer for his lack of diligence in failing to destroy the instrument. This rule should also apply to state bonds,[7] for when a sovereign government undertakes to deal in commercial paper, it assumes the ordinary commercial responsibilities; [8] indeed, it is to the interest of a borrowing state that *bona fide* purchasers of its paper should be protected. But the holder in due course of a Virginia bond which had been redeemed and stolen from the treasury, was considered to have no claim against the state,[9] because, it was said, surrender extinguishes the vitality of such an instrument,[10] delivery is essential to execution,[11] and there was no valid redelivery. Even where this theory that redemption involves extinction is plainly inapplicable, as in the case of public securities called in to be kept as a special fund, the state, having the power to abrogate the law merchant provided no vested right be impaired, may, while holding such securities, declare them void, and thereby destroy forever the negotiability without changing the actual appearance of the paper; [12] the public records in such case give sufficient notice to avoid estoppel by recitals or negligence. Accordingly, it might be argued that a taker of state bonds has constructive notice of previous legislation providing for redemption before maturity,

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[11] See Merrill *v.* Nat'l Bank, 173 U. S. 131.

[1] If the cancellation is erased, it is void, according to the stricter view, on account of the material alteration, apart from statute. District of Columbia *v.* Cornell, 130 U. S. 655. But see Knight *v.* Lanfear, 7 Rob. (La.) 172.

[2] Burbridge *v.* Manners, 3 Camp. 193.

[3] Morley *v.* Culverwell, 7 M. & W. 174. *Contra*, Beebe *v.* Real Estate Bank, 4 Ark. 546.

[4] Ingham *v.* Primrose, 7 C. B. (N. S.) 82. The tearing of the bill in half was not there a cancellation.

[5] Rockville Nat'l Bank *v.* Citizens' Gaslight Co., 72 Conn. 576.

[6] Fogg *v.* School District, 75 Mo. App. 159. *Contra*, Board *v.* Sinton, 41 Oh. St. 504.

[7] *Cf.* California *v.* Wells, Fargo & Co., 15 Cal. 336.

[8] United States *v.* Barker, 12 Wheat. (U. S.) 559.

[9] Branch *v.* Commissioners, 80 Va. 427.

[10] *Cf.* Bardsley *v.* Sternberg, 17 Wash. 243.

[11] Germania Savings Bank *v.* Suspension Bridge, 73 Hun (N. Y.) 590. *Contra*, Cooke *v.* United States, 91 U. S. 389; Worcester, etc., Bank *v.* Dorchester, etc., Bank, 10 Cush. (Mass.) 488. But these were cases respectively of treasury notes and bank-bills, which may be deemed more in the nature of currency.

[12] Pugh *v.* Moore, 44 La. Ann. 209.